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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,106	11/09/2001	Daniel K. Schiffer	KCC-15,891	3014

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EXAMINER

SPERTY, ARDEN B

ART UNIT PAPER NUMBER

1771

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,106

Applicant(s)

SCHIFFER ET AL.

Examiner

Arden B. Sperty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-26,31,35,37-54 and 56-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-26,31,35,37-54 and 56-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

3NON-FINAL OFFICE ACTION

1. Applicant's comments, filed 3/28/05, have been entered and carefully considered. The 35 USC 101 double patenting rejection, stated in the previous office action, is withdrawn per Applicant's comments. The terminal disclaimer, also filed 3/28/05, overcomes the obviousness-type double patenting rejection stated in the previous office action. Despite these advances, the claims are not in condition for allowance because additional prior art has been found, as applied herein.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 53 and 56-58 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6328723 to Burns et al.

4. The Burns reference teaches a biodegradable sanitary napkin composite comprising a liquid pervious topsheet 38, a liquid impervious backsheet 40, and an absorbent core 42 positioned between the topsheet and backsheet. The topsheet may be a liquid permeable nonwoven sheet. The backsheet comprises two layers: a first gas permeable apertured film layer 40A (skin layer, claim 56) and a second breathable microporous layer 40B. (See col. 4, lines 23-36). The second layer 40B is a breathable microporous layer formed by stretch-thinning a biodegradable polymer film with a filler dispersed therein (col. 6, lines 32-65; col. 2, lines 58-67).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 21-26, 31, 35, 38-42, 44-47 and 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6328723 to Burns in view of US Patent 5340646 to Morita.

7. The Burns reference teaches a biodegradable sanitary napkin composite comprising a liquid pervious topsheet 38, a liquid impervious backsheet 40, and an absorbent core 42 positioned between the topsheet and backsheet. The topsheet may be a liquid permeable nonwoven sheet. The backsheet comprises two layers: a first gas permeable apertured film layer 40A and a second breathable microporous layer 40B.

(See col. 4, lines 23-36). The topsheet, which may be a nonwoven, is joined to the stretch-thinned film by any of a variety of means (col. 5, lines 24-31).

8. The second layer 40B is a breathable microporous layer formed by stretch-thinning a biodegradable polymer film with a filler dispersed therein (col. 6, lines 32-65; col. 2, lines 58-67). Fillers include inorganic materials, as well as fatty acid ester coated (organic) materials (col. 6, lines 46-50). While the reference teaches a biodegradable polymer, the reference is not concerned with the type of biodegradable polymer film used in the invention. Therefore, it would have been obvious to one of ordinary skill in the art to turn to additional prior art to discern desirable types of biodegradable polymers used in stretch-thinned films.

9. The Morita reference teaches hydrolysable (biodegradable) material used for stretch-thinned, filled films, the material comprising polylactic acid (col. 2, lines 28-36). It would have been obvious to one of ordinary skill in the art to use the material taught by Morita in the invention of Burns, motivated by a desire for a biodegradable, filled, stretch-thinned, polymeric film in accordance with Burns.

10. Regarding claims 24-26, although the Burns reference does not specifically list the methods of forming the nonwoven material, it can be reasonably presumed that the claimed methods (spunbond, meltblown, and air-laid) are encompassed by the term "nonwoven," since the claimed forming methods are notoriously well-known in the art. (col. 5, lines 32-59).

11. The Morita reference teaches optimization of various property values via several types of modification (col. 11, line 66- col. 13). Regarding claims 44-47, and 50, the

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Morita reference is silent with respect to specific proportions of filler and polymer.

However, it would have been obvious to one of ordinary skill in the art to determine the optimum amounts of ingredients, without undue experimentation, to obtain desired property values for the particular ultimate intended use, such as porosity, basis weight, and strength. Absent a showing of unexpected results with the claimed values, no patentable distinction is seen between the claimed invention and that of the prior art.

12. The composite of Burns is stretched in at least one direction (Abstract), thus the limitations of both claims 48 and 49 are met.

13. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Burns and Morita as applied to claim 21 above, and further in view of Roberts, "β-cyclodextrin Molecules and Their Use in Breathable Barriers."

14. The combination of Burns and Morita teaches a filled, stretch-thinned biodegradable film, wherein a variety of fillers may be used. While the references are silent with respect to cyclodextrin, Roberts teaches that β-cyclodextrin enhances moisture vapor permeability of polymeric barrier films. It would have been obvious to one of ordinary skill in the art to use cyclodextrin as a filler in the invention of Burns to enhance vapor permeability of the sanitary napkin composite. (See Roberts section 1.3).

15. Claims 21-26, 31, 35, 37-42 and 44-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns in view of US Patents 6028160 or 6156929, both to Chandler et al.

16. The Burns reference teaches a biodegradable sanitary napkin composite comprising a liquid pervious topsheet 38, a liquid impervious backsheet 40, and an absorbent core 42 positioned between the topsheet and backsheet. The topsheet may be a liquid permeable nonwoven sheet. The backsheet comprises two layers: a first gas permeable apertured film layer 40A and a second breathable microporous layer 40B. (See col. 4, lines 23-36). The topsheet, which may be a nonwoven, is joined to the stretch-thinned film by any of a variety of means (col. 5, lines 24-31).

17. The second layer 40B is a breathable microporous layer formed by stretch-thinning a biodegradable polymer film with a filler dispersed therein (col. 6, lines 32-65; col. 2, lines 58-67). Fillers include inorganic materials, as well as fatty acid ester coated (organic) materials (col. 6, lines 46-50). While the reference teaches a biodegradable polymer, the reference is not concerned with the type of biodegradable polymer film used in the invention. Therefore, it would have been obvious to one of ordinary skill in the art to turn to additional prior art to discern desirable types of biodegradable polymers used in stretch-thinned films.

18. Ecoflex®, sold by BASF, is a well-known biodegradable polymer comprising the composition (the composition also known to be abbreviated "PBAT") of claim 21, and is conventional for use in the art, as can be evidenced by numerous patents of which Chandler's are merely representative. Therefore it would have been obvious for one of

ordinary skill in the art to use Ecoflex® in the invention of Burns. (See Chandler 6028160, Example III and col. 2, lines 38-43; Chandler 6156929, col. 6, lines 2-6).

19. Regarding claims 24-26, although the Burns reference does not specifically list the methods of forming the nonwoven material, it can be reasonably presumed that the claimed methods (spunbond, meltblown, and air-laid) are encompassed by the term "nonwoven," since the claimed forming methods are notoriously well-known in the art. (col. 5, lines 32-59).

20. Regarding claims 44-47, it would have been obvious to one of ordinary skill in the art to determine the optimum amounts of ingredients, without undue experimentation, to obtain desired property values for the particular ultimate intended use, such as porosity, basis weight, and strength. Absent a showing of unexpected results with the claimed values, no patentable distinction is seen between the claimed invention and that of the prior art.

21. The composite of Burns is stretched in at least one direction (Abstract), thus the limitations of both claims 48 and 49 are met.

22. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burns as applied above to claim 53, and further in view of US Patents 6028160 and 6156929, both to Chandler et al.

23. The Burns reference teaches a biodegradable sanitary napkin composite as described above, with respect to claim 54, but the reference is not concerned with the type of biodegradable polymer film used in the invention. Therefore, it would have been

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obvious to one of ordinary skill in the art to turn to additional prior art to discern desirable types of biodegradable polymers used in stretch-thinned films. Ecoflex®, sold by BASF, is a well-known biodegradable polymer comprising the claimed composition (the composition also known to be abbreviated "PBAT"), and is conventional for use in the art. Therefore it would have been obvious for one of ordinary skill in the art to use Ecoflex® in the invention of Burns. (See Chandler 6028160, Example III and col. 2, lines 38-43; Chandler 6156929, col. 6, lines 2-6).

Conclusion

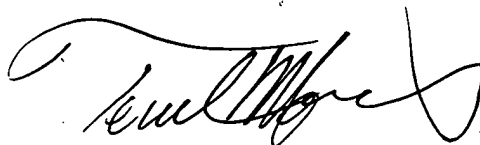
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arden B. Sperty whose telephone number is (571)272-1543. The examiner can normally be reached on M-Th, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571)272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arden B. Sperty
Examiner
Art Unit 1771

April 22, 2005



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